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No. A-294

IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

WILLIAM RANDOLPH KLEIN, *Appellant*,

v.

STATE OF FLORIDA, *Appellee*.

ON APPEAL FROM THE DISTRICT COURT OF APPEALS OF FLORIDA, SECOND DISTRICT

JURISDICTIONAL STATEMENT STATE CRIMINAL CASE

WILLIAM RANDOLPH KLEIN, *pro se*
Appellant
2071 Main Street
Sarasota, Florida 33577
(813) 365-1930

November 23, 1984

33pp

QUESTIONS PRESENTED

1. Whether the Sarasota, Florida, City Noise Ordinance, which provides criminal penalties for violation thereof, deprived appellant of his liberty and enjoyment of his property without due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution because the noise ordinance provision, which applies to a person's pets causing noise, does not set forth any meaningful standards as to prohibited levels of noise, with the result that a person's neighbors can arbitrarily complain to the police department thereby causing criminal proceedings to be initiated without the application of any standards.

2. Whether the City of Sarasota, Florida noise ordinance provision, which sets forth specific noise level decibel

limitations for nearly all activities but does not set any ascertainable standards for animals causing noise, is unconstitutional on its face as being void for vagueness for lack of objective standards by which a reasonable person could determine how to conduct himself in determining what animal noise levels violates the ordinance.

3. Whether the City of Sarasota, Florida noise ordinance provision, at issue herein, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States because the ordinance establishes separate classifications which discriminate between owners of animals for private pets and owners of private animal attractions operated for profit to which the public has general admission, said classification being without any rational basis or differentiation as to standards.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

No. A-294

WILLIAM RANDOLPH KLEIN, Appellant,

v.

STATE OF FLORIDA, Appellee.

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The District Court of Appeals of Florida, Second District, in a Per Curiam opinion, denied Appellant's Petition for a Writ of Certiorari on July 27, 1984. The opinion appears in the appendix hereto, App. 1a. The order of the Circuit Court of the Twelfth Judicial Circuit which affirmed the Final Judgment of the County Court for Sarasota County, Florida appears in the Appendix hereto, App. 3a. The Final Judgment of the County Court of Sarasota County, Florida appears in the appendix hereto, App. 5a.

JURISDICTION

In denying appellant's petition for certiorari and thereby affirming appellant's conviction, the District Court of Appeals of Florida, Second District, sustained the constitutionality of Sarasota City Code Section 26-3 and 26-4. The judgment of the District Court of Appeals was entered on July 27, 1984 and is annexed as Appendix 1a.

The jurisdiction of this Court is conferred by Title 28 U.S.C. §1257(2). The decision of the highest possible court in the State of Florida to which appellant could seek relief in this case was the District Court of Appeals of Florida, Second District. The Supreme Court of Florida Manual of Internal Operating Procedures dictates in part as follows:

Section II; Internal Procedures for Handling of Cases.

A. Discretionary Review

1. Discretionary Review of District Court of Appeal Decision

> (a) When a notice of seeking discretionary review is filed, the clerk's office will determine whether a district court of appeal has written an opinion in the case. If there is no opinion, the case is automatically dismissed....

Thus, because the District Court of Appeals of Florida, Second District, gave no opinion in appellant's case a notice seeking discretionary review would be automatically dismissed. No further right of appeal is possible in the State of Florida.

Further, it is well settled that a local ordinance is deemed a state statute for the purposes of invoking the United States Supreme Court's jurisdiction under

28 USC §1257(2), conferring upon the United States Supreme Court jurisdiction to review final state court judgments where the decision is in favor of validity of state "statute" challenged as repugnant to the United States Constitution or laws. Erznoznik v. Jacksonville, 422 US 205; 95 SCt 2268; 45 LEd 2d 125 (1975). Therefore, the Sarasota City Code of Sarasota, Florida, is subject to constitutional challenge pursuant to 28 USC §1257(2).

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT, UNITED STATES CONSTITUTION:

No person shall...be deprived of life, liberty, or property without due process of law...

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION:

> Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

28 USC §1257. State courts; appeal certiorari. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

> (2) By appeal, where is drawn in question the validity of a statute if any statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the

United States, and the decision is in favor of its validity.

Supreme Court of Florida Manual of Internal Operating Procedures; Section II (A)(1)(a), as set out more fully, supra.

Sarasota City Code, Sections 26-3 and 26-4 as set out infra, pages 9, 10, 11.

STATEMENT OF THE CASE

In June of 1977, the State Attorney's office of the Twelfth Judicial Circuit, State of Florida, instituted prosecution against appellant herein, WILLIAM RANDOLPH KLEIN, for alleged violations of Chapter 8, Sarasota Municipal Ordinances. The ordinance under which appellant was initially charged amounted to an animal nuisance provision which was ostensibly enacted to regulate noisy fowl and animals.

At that time, rather than litigating the factual allegations and constitutional issues of the ordinance, appellant entered into negotiations and a subsequent agreement with the State Attorney's Office in an effort to resolve the problem. The problem at the time of the 1977 prosecution was exactly the same problem for which appellant was subsequently convicted of on September 22, 1981, giving rise to the within appeal. Specifically, certain neighbors of appellant were objecting to the sounds emanating from appellant's backyard of his home wherein appellant maintained valuable and rare macaw parrots.

During the 1977 prosecution, Appellant and the State, with the consent, recommendation and approval of the County Court Judge, Honorable Marvin Silverman, entered into an agreement whereby appellant would design and construct a screened

and insulated enclosure for his macaws. Appellant had successfully abated the problem and the 1977 prosecution was voluntarily terminated shortly thereafter.

However, on June 5, 1981, after appellant had made costly alterations in reliance on the representations made by the State Attorney's Office concerning the satisfaction of the terms of the 1977 agreement, appellant was again charged for a violation of a new ordinance, Section 26-3 and 26-4 of the Sarasota City Code.

Section 26-3; Definitions of standards, provides in part:

> (b) Definitions.
>
> (9) Excessive and unnecessary noise means any sound in quantities which are or may be harmful or injurious to human health or welfare, animal or plant life or property,including outdoor recreation. In addition to the

specific noise-generating activities set out below, this term includes the excessive and unnecessary honking of horns, whistles, operation of radios, phonographs, loudspeakers, amplifiers, equipment, and excessive and unnecessary noise caused by animals.

Section 26-4; Prohibited acts, provides in part:

(a) General Prohibitions. No person shall make, continue, or cause to be made or continued any unusually loud, unnecessary or excessive noise which unreasonably annoys, disturbs, injures or endangers the comfort and repose of others within the limits of the city.

(b) Specific Prohibitions. In addition to the general prohibition set out in subsection (a) above and the maximum permissible sound levels

set out in section 26-5 below, and unless otherwise attempted by this chapter or by the act of the city commission, the following specific acts, or the causing or permitting thereof, are hereby declared to be in violation of this chapter:

(4) Animals. Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks or makes other sounds which create excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive zone. This provision shall not apply to public zoos or private animal attractions which the public has general admission and which are regulated by the city.

The new ordinance is essentially the same as Chapter 8 of the Municipal Ordinance

under which appellant was previously charged.

The facts concerning the 1977 prosecution and the 1981 prosecution, giving rise to the within appeal, are nearly identical. The only changes in circumstances concern the promulgation of a new City Ordinance and the appellant's reliance, to his financial and legal detriment, upon the validity of the State Attorney's representations of satisfaction with the measures taken by appellant in 1977 to alleviate noise cause by appellant's macaws.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This case presents the important question of whether a city can enact a local ordinance which, without any objective standards, permits a person's neighbors to complain of a nuisance of

noise and cause criminal proceedings to be initiated for a person's mere maintenance of pets, and thereby deprive that person the liberty of keeping animals as pets and invade his or her privacy. The District Court of Appeals of Florida, Second District, affirmed the constitutional validity of the ordinance, Sections 26-3 and 26-4 of the Sarasota, Florida, City Code, by denying Appellant's Petition for Writ of Certiorari. See Appendix 1a. The question merits full briefing and plenary review because of the intrinsic seriousness and because the constitutional issues involved require a more detailed analysis than the courts below were willing to determine.

It is well settled that where a law limits the liberty of all persons to engage in some activity or conduct there is a due process question; where a law limits the liberty of some persons but not

others there is an equal protection problem. The noise ordinance by which appellant was convicted directly limits the use of a person's property which is an exclusive right protected by our Constitution.

The case at hand presents both of these important issues. First, appellant has been deprived of his fundamental right of privacy as well as his right to use and enjoy his personal and real property. Secondly, the ordinance at issue herein establishes two separate classifications for enforcement of the ordinance, distinguishing between a profit oriented animal owner and a private citizen who owns an animal for his or her personal enjoyment.

I.

Under the due process guarantee provided by the Fifth Amendment and made applicable to the States by the Fourteenth

Amendment, the Court will employ a "strict scrutiny" standard where a fundamental right is involved. See, Skinner v. Oklahoma, 316 US 535; 62 SCt 1110; 86 LEd 1655 (1942). Griswold v. Connecticut, 381 US 479; 85 SCt 1678; 14 LEd 2d 510 (1965). The instant case involves appellant's right of privacy within his home. The city ordinance at issue allows a person's neighbors to complain to the police department, and the police chief, through a determination that the noise caused by the animals at that person's home is "excessive and unnecessary", may thereby initiate criminal proceedings for violation of the ordinance. Thus, the ordinance encourages arbitrary enforcement inasmuch as a person's neighbors can make their own subjective determination of a violation. As such, the ordinance protects persons who have special sensitivities which are entirely different from

those of a reasonable person.

Clearly, the "excessive and unnecessary" standard employed in the ordinance is too subjective. Where other portions of the noise ordinance utilize electronic decibel readings to determine a violation, the portion of the ordinance which applies to animals does not set any objective standards by which a reasonable person could, from reading the language thereof, understand and determine how to conduct himself or herself. It is well settled in the law that where a statute or ordinance which is enforced through criminal sanctions, the terms thereof must be sufficiently explicit to inform those subject to it of what acts it is their duty to avoid or what conduct on their part will render them liable to its penalties. The due process requirement of definiteness is violated by a criminal statute that fails to provide adequate

notice to a person of ordinary intelligence that his contemplated conduct is prohibited. See, e.g., Papachristou v. Jacksonville, 405 US 156; 92 SCt 839; 31 LEd 2d 110 (1972) and Smith v. Goguen, 415 US 556; 94 SCt 1242; 39 LEd 2d 605 (1975).

Unquestionably, the most disturbing part of the application of the noise ordinance at issue herein is that appellant's neighbors can effectively initiate criminal proceedings at anytime by complaining of "excessive and unnecessary" bird noises. Such a standard encourages spying, harassment, verbal and symbolic threats of violence by neighbors in addition to frequent complaints to the police department. Without clear and explicit guidelines, such as electronic sound meter decibel readings, the very purpose of the noise ordinance is totally frustrated. Rather than promoting the

public health, safety, welfare, morals, and use and enjoyment of property, the ordinance creates confusion, ill feelings, invasions of privacy, harassment and disruption of the public's use and enjoyment of property.

Thus, because of the fundamental right of privacy involved in this case strict scrutiny should apply. The protection of the public health, safety, welfare and morals is not such a compelling or overriding interest which would justify the imposition of criminal sanctions without objective standards. The fact that the ordinance provides explicit guidelines for nearly all activities pertaining to noise levels, but fails to provide such guidelines to animals and birds causing noise creates arbitrary enforcement of its provisions relating to animal noises. Accordingly, the question of the validity of the

of the Sarasota City Ordinance, Sections 26-3 and 26-4 which authorizes criminal sanctions for violation of vague and subjective standards is of substantial constitutional dimension and should be granted plenary review.

II.

The Sarasota City Code Sections 26-3 and 26-4 define two separate classifications which raises the substantial constitutional issue of whether the ordinance violates the equal protection clause of the Fourteenth Amendment to Constitution of the United States. Specifically, the ordinance arbitrarily and without purpose creates a select class of individuals not subject to the provisions of the ordinance. Section 26-4 excludes from its application all privately owned businesses to which the public is admitted. The last sentence of 26-4 provides:

> This provision shall not apply to public zoos or private animal attractions which the public has general admission and which are regulated by the city.

In order to create a special class, as in the present case, the State must show at least a rational basis for such a distinction. Because the Sarasota City Code Sections 26-3 and 26-4 affects significant and fundamental interests of animal owners an even stricter standard should be applied. A review of the ordinance shows that individuals with peculiar sensitivities can easily interfere with a pet owner's right of privacy and ownership interests by submitting informal or formal complaints to the police department. However, a profit-seeking animal owner is left undisturbed even though it is impossible to believe that residents of animal

attractions such as Jungle Gardens in Sarasota are not also offended by intensive bird and animal noises emitted by those birds and animals on display. It is important to note that the City of Sarasota has no further regulations in either the ordinance or elsewhere which would affect privately owned animal attractions to which the public is admitted.

Inasmuch as the ordinance in question offers no rational basis for distinguishing between a pet owner and a public animal attraction, it thereby creates an arbitrary and unreasonable classification in contravention to the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

The questions presented by this appeal are substantial and require plenary consideration by the Court for their resolution.

Respectfully submitted,

William Randolph Klein
Appellant, pro se
2071 Main Street
Sarasota, Florida 33577
(813) 365-1930

APPENDIX

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

WILLIAM RANDOLPH KLEIN,
Petitioner,

v. Case No. 84-1324

STATE OF FLORIDA,
Respondent.

Opinion filed July 27, 1984.

Petition for Writ of
Certiorari to the Circuit
Court for Sarasota County;
Andy Owens, Judge.

R. John Cole, II, of
Steves, Busch & Cole,
Sarasota, for Petitioner.

PER CURIAM.

Petition for Writ of Certiorari denied.

RYDER, C.J., and OTT and DANAHY, JJ., Concur.

IN THE CIRCUIT OF TWELFTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SARASOTA COUNTY, FLORIDA

WILLIAM RANDOLPH KLEIN,	)	
Defendant/Appellant,	)	
	)	Case Nos.
vs.	)	81-0887-3-MI
	)	82-1902-AP-01
STATE OF FLORIDA	)	
Plaintiff/Appellee.	)	

Appeal from the County Court of Sarasota County, ROBERT H. STAHLSCHMIDT, Judge

John Cole, Esq.
Attorney for Appellant.

Ralph Marbank, Esq.
Attorney for Appellee.

OWENS, ANDY, Circuit Judge

No reversible error having been demonstrated by the Appellant in this case and the Court finding that Section 26-3 and 26-4 of the Sarasota City Code are constitutional, the Final Judgment of the County Court for Sarasota County, Florida, in this cause is hereby affirmed.

DONE AND ORDERED in Chambers in Sarasota County, Florida this 2nd day of May, 1984.

_____

ANDY OWENS, CIRCUIT JUDGE

IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA

vs.

WILLIAM KLEIN

AMENDED COMMITMENT
CORRECTING ERROR BY
DEPUTY CLERK
CASE NO.
81-0887-3-MI
OFFENSE: EXCESSIVE
AND UNNECESSARY BIRD
NOISES

CRIMINAL

PLEA: NOT GUILTY

ADJ: GUILTY BY JURY

****

F.S. 960.20: 10.00 ATTORNEY:ALAN BENNETT

FINE: 500.00

COURT COST: 13.00

SURCHARGE: 25.00

TOTAL: 548.00

CONDITIONS OF SENTENCE

OTHER CONDITIONS:6 MONTHS PROBATION SALVATION ARMY SUPERVISION/ 30 DAYS COUNTY JAIL -SUSPENDED ON CONDITION ALL ORDINANCE VIOLATING NOISES CEASE EITHER BY DISPOSAL OF MACAWS OR BUILD SOLID ENCLOSURE THAT WILL PREVENT NOISE CROSSING PROPERTY LINE OF OTHER PERSONS/ APPEAL PENDING.

DATE: 9-22-81

CLERK OF COUNTY COURT

BY: DEPUTY CLERK

PRESIDING JUDGE: R. STAHLSCHMIDT

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

WILLIAM RANDOLPH KLEIN,

Appellant,

vs. Case No: 84-1324

STATE OF FLORIDA,

Appellee. /

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that WILLIAM RANDOLPH KLEIN, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order denying appellant's Petition for Writ of Certiorari, affirming the judgment of conviction, entered herein on July 27, 1984.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

DATED this 10th day of October 1984.

LAW OFFICES OF
WILLIAM RANDOLPH KLEIN, P.A.

By:_____
WILLIAM RANDOLPH KLEIN, pro se
Appellant
2071 Main Street
Sarasota, Florida 33577
(813) 365-1930

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant Rule 28.5(b) of the Rules of the Supreme Court, three (3) copies of the foregoing Jurisdictional Statement were deposited in a United States mail box, with first-class postage prepaid, and properly addressed to Ralph L. Marchbank, Jr., c/o James A. Gardner, State Attorney, 2002 Ringling Boulevard, Sarasota, Florida 33577, this 23rd day of November, 1984.

WILLIAM RANDOLPH KLEIN